

Fourth Session - Thirty-Eighth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Legislative Affairs

Chairperson
Mr. Daryl Reid
Constituency of Transcona

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Tuesday, April 18, 2006

TIME – 12 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Daryl Reid (Transcona)

VICE-CHAIRPERSON – Ms. Kerri Irvin-Ross (Fort Garry)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Mr. Mackintosh

Messrs. Derkach, Dewar, Hawranik, Ms. Irvin-Ross, Ms. Korzeniowski, Messrs. Maguire, Martindale, Mrs. Mitchelson, Messrs. Reid, Swan

APPEARING:

Mr. Kevin Lamoureux, MLA for Inkster

MATTERS UNDER CONSIDERATION:

Recruitment and Selection of the Auditor General

* * *

Clerk Assistant (Ms. JoAnn McKerlie-Korol): Good afternoon. Will the Standing Committee on Legislative Affairs please come to order.

The first item of business before the committee is the election of a Chairperson. Are there any nominations?

Mr. Gregory Dewar (Selkirk): I nominate Mr. Reid.

Madam Clerk Assistant: Mr. Reid has been nominated. Are there any further nominations?

Seeing none, Mr. Reid, would you please take the Chair.

Mr. Chairperson: Thank you. The next item of business is the election of a Vice-Chairperson. Are there any nominations for the position of Vice-Chairperson?

Mr. Dewar: I nominate Ms. Irvin-Ross.

Mr. Chairperson: Ms. Irvin-Ross has been nominated. Are there any further nominations?

Seeing none, Ms. Irvin-Ross has been appointed as Vice-Chairperson.

This afternoon the committee will be considering the recruitment and selection of the Auditor General. As a background, the appointment of the Auditor General is for a 10-year term. The incumbent may be reappointed for a further 10-year term. Mr. Singleton, the current Auditor General, has indicated that he will be resigning from his position as Auditor General of Manitoba effective July 15, 2006.

This position is an Order-in-Council appointment. A copy of the applicable legislation for this position was circulated at the commencement of this meeting, and I hope members of the committee will find it at their places at the table.

Before commencing with the business before the committee, did the committee wish to indicate how late it wishes to sit?

Mr. Leonard Derkach (Russell): A question on who does the hiring of the independent officer, the Auditor General?

Mr. Chairperson: Thank you, Mr. Derkach, for the question. In the information in The Auditor General Act that you have a copy in front of you, Part 2, Appointing the Auditor General 2(1): On the recommendation of the Standing Committee of the Assembly on Legislative Affairs, "the Lieutenant Governor in Council must appoint an Auditor General of Manitoba, as an officer of the Assembly, to provide the Assembly with independent information, advice and assurance under this Act."

Does that answer your question?

Mr. Derkach: Yes, it does. Thank you.

Mr. Chairperson: Any further questions? Going back to my original question, does the committee wish to indicate how late we wish to sit this afternoon? It is a question we have to ask.

An Honourable Member: One o'clock at the latest.

Mr. Chairperson: One o'clock.

An Honourable Member: No later.

Mr. Chairperson: No later than one. Thank you, members of the committee.

The floor is now open for suggestions on how it wishes to proceed.

Mrs. Bonnie Mitchelson (River East): I wonder if we might get agreement from the committee that before we move into setting down the criteria and the guidelines for the hiring of the provincial auditor whether, in fact, we might have an exit interview as a committee with the present Auditor so that we could ask questions, and maybe he could give some suggestions or ideas on what his experience has been, and how then we might be able to have informed dialogue and discussion around the process for hiring a new Auditor.

Ms. Kerri Irvin-Ross (Fort Garry): Yes, this was a practice that we did last time when we did the hiring of the Ombudsman and the Children's Advocate, the exit interview. So I would suggest that we can do that again. But I do recall that it was an in-camera interview that we had, so I would make that suggestion as well.

Mr. Chairperson: Does that answer your question, Mrs. Mitchelson?

Mrs. Mitchelson: Yes, Mr. Chair, as long as there is agreement. Maybe we could do that fairly expeditiously. I am not sure that we want to set down too much detail today until we have that exit interview with him.

Ms. Irvin-Ross: Just for clarification, it was the subcommittee that did the exit interview. The hiring committee were the individuals that did the exit interview with the Ombudsman and the Children's Advocate, in camera.

Mr. Derkach: Mr. Chair, in this case, I would recommend, because this is the Auditor General, that the committee be the body that would be involved in the exit interview. I would ask that there be agreement of the committee that we do have an exit interview. I do not know if that has been agreed to yet or not.

Mr. Chairperson: Well, then, perhaps I will pose the question to committee that it has been recommended that an exit interview with the current Auditor General be conducted, and that the exit interview occur in camera and be conducted by the subcommittee that is to be struck by this particular committee. *[interjection]* Was it the main committee you wish to have conduct the exit interview?

An Honourable Member: Yes.

Mr. Chairperson: It is the will of the committee?

Some Honourable Members: Agreed.

Mr. Chairperson: So, if my understanding is clear then, the exit interview will be conducted with the current Auditor General in camera by the main committee itself. Is that agreed? *[Agreed]*

Mr. Kevin Lamoureux (Inkster): I trust I would be involved in that exit interview, because I am not a formal member of the committee.

Mr. Chairperson: I believe there is agreement from the committee, Mr. Lamoureux, that you would be included in that process as well.

Okay, I guess we need to determine, after the exit interview is completed, other parts of the process with respect to a subcommittee. My understanding is there may be some discussion with respect to that particular process. What is the will of this committee?

* (12:10)

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Well, my understanding is there is an interest in following—it does not have to be to the T—the process over the last couple of independent offices' hiring, with one notable exception. I understand there is some interest in having sort of a blue—what do you call it?—an independent group that would account to the subcommittee and do the advertising and could short-list, recognizing that the subcommittee could still interview. We have talked about some names and so on. So I guess the question is should we put that process in place right now, because I do not know if there is anything that would come from the exit interview that would change it. But it would be nice to have some assurance that we are getting on with the job given the time lines. If we could strike the subcommittee and agree on the process of the expert panel, then perhaps we have made good progress today. Then we could set up the meeting for the exit interview.

Mr. Chairperson: Is there agreement on the committee to follow that process as described?

Mr. Derkach: Well, Mr. Chair, I think the subcommittee is a process that we can proceed with. You know, it is just a matter of naming members to that committee. But, in terms of the subcommittee's instructions to this outside committee, I think, if I followed Mrs. Mitchelson's recommendation, that

that, if you like, mandate of that committee would be held until after the exit interview. I may be paraphrasing and maybe Mrs. Mitchelson should answer for herself, but that is the way I understood it.

Mr. Chairperson: Did you wish to add a comment, Ms. Irvin-Ross?

Ms. Irvin-Ross: I have a motion around the subcommittee, the screening committee.

Mr. Chairperson: Is the committee willing to hear the motion to be included as part of the debate?

Mr. Derkach: Well, before we get to that, the subcommittee is made up of what, three members? Is there a set number of members on that subcommittee? That is my question.

Mr. Chairperson: Yes. I am reminded that the subcommittee that was struck for the two previous positions included the full committee, five members, pardon me, and that this time I think it is being suggested that perhaps the three members of the subcommittee—I am misinterpreting what I am hearing here? Perhaps I will ask for clarification again. I am not paying attention here clearly enough, obviously.

Mr. Mackintosh: The discussions have been around of having, first of all, the subcommittee, which is a better way of getting some of the nitty-gritty done of this committee, and that would be comprised of five members just like last time. The Member for Inkster (Mr. Lamoureux) would be one of those members. Then there would be an executive or an advisory group from outside government that would advise the subcommittee.

Mr. Chairperson: I will not attempt to describe that again, the process.

Mr. Derkach: Okay. The outside committee, made up of members outside of the Legislative Assembly members, would be comprised of three people. The subcommittee of MLAs would be comprised of five people, government having how many on that committee?

Mr. Mackintosh: Last time I know it was three government members, around there, including the Chair.

Mr. Derkach: Well, Mr. Chair, because this has to do with parties in the Legislature, are we going to then include the independent Liberal member as an addition? Will there be three, two and the independent Liberal member then? If we do not do it that

way, that means the opposition, having 20 members in Legislature, has one representative equal to the independent members who have two. That is not fair.

Mr. Mackintosh: Well, I am just going on the precedent.

An Honourable Member: Yes, but it was a poor precedent.

Mr. Mackintosh: But it has been one that we hashed out at this table. So, rather than rehash it out, I was just suggesting that we just proceed on the basis of what happened last time.

Mr. Derkach: This is far too important a position, Mr. Chair, to be using even poor precedence. I think what we want is a balance on this committee, and to me a balance would indicate that there should be if there are three government members, there should be two opposition members and the Liberal could be added as a third member or an extra member on that committee.

I mean, it is only by courtesy that the independent member is made part of this committee, but to reduce the opposition's participation because of the independent member is just unfair to the process. So I argue that, if there are three government members, then there should be two opposition members; otherwise, the balance is not there.

Mr. Mackintosh: Well, perhaps we will have to have further discussions on this. That was in order to maintain the government majority, obviously, and so if we increase that, we will have three and then three, that was why we did not agree to it last time. So we are just going around the old argument. If we increase the government members to four, then we are pretty well back to the standing committee size, so I think we need some discussions on that.

Mr. Derkach: Well, the purpose of that, Mr. Chair, I mean, if we only have one opposition member on this committee, it does not allow opposition to have any ability to compare notes, to dialogue with a member from the opposition on matters that come up during that committee debate. I am just looking for fairness and I still think that it is important that the independent member have a voice, but to have it equal to that of the opposition party just does not really square.

Mr. Mackintosh: No, I take the point. I also take the point of the earlier discussions, but it was suggested in conversations across the table that four, two and

one work. I do not see any problem with that. It is just we are getting into a larger group, but if that satisfies everyone, then I do not see any problem with that.

Mr. Chairperson: So is it the will of the committee, then, that the subcommittee will be comprised of four members of government, two members of the official opposition and one member from the independent members? Is that agreed? *[Agreed]*

Is it the will of the committee, then, now that we have decided on the numbers for the subcommittee, that did we wish to attach names to those individual positions at this point, or is it something that the committee wishes to arrive at, at a later time?

Mr. Derkach: I think each party should name its own members to that committee and then that can be made available to the Government House Leader (Mr. Mackintosh)—

An Honourable Member: To the Clerk.

Mr. Derkach: —or to the Clerk.

Mr. Chairperson: Is it agreed then that the names will be submitted to the Clerk's office? *[Agreed]*

Mr. Mackintosh: Now that we have got that done, is there a will of the committee, then, to deal with the independent advisory group? We are prepared to deal with it. I see a nod. Perhaps then we can proceed. The subcommittee could deal with the mandate, I think. Okay, so I will deal with that point now.

There have been some discussions around how to strengthen this process and better ensure its independence and, as well, the expertise that it brings to the table in the selection of the short-listed candidates and ultimately a recommendation on the new Auditor General.

* (12:20)

The idea that was bandied around was to have a panel of three persons who have been recognized for their familiarity with this kind of work and, as well, the relationship of the Auditor General with government. Three names that have been proposed are Bill Fraser, Don Potter and Shirley Strutt. Shall we put that forward for consideration of the committee to see if there is an acceptance of that?

I think it does move the selection process to a new level of independence and access to information about the position. It is an important position. This may lead the way to this kind of a model being adopted for the other offices, I suppose.

So I understand that there is some willingness to try that, recognizing though that, of course, it is the committee that makes the ultimate decision, and we can work out what the mandate of the special group would be by way of the subcommittee.

Mr. Derkach: I think the concept is one that our party would be willing to try as a step in a direction that, I guess, lessens the cumbersome work of screening and receiving applications. The membership is one that, in essence, we went through a list and we thought that we had agreement on it. But there have been some second thoughts in terms of how closely membership is tied to government and whether there is not a way to move entirely away from government and whether there are names that could be not tied to government, whichever stripe of government in any way, shape or form. So there is a bit of a question there, and, perhaps, that is something that we should be mindful of as we move ahead as well, about the number of members in that committee.

I guess, the other issue is regarding the mandate of the committee itself and how short or how long a list of people they come back with to the legislative members committee and exactly the extent of the involvement in terms of interviews and that sort of thing by subcommittee members as well. So I think those things, if we could leave open, at this time. The concept, I think, is open.

Mr. Mackintosh: Well, if there can, then, be agreement on setting up this advisory group and then the mandate be worked on through the subcommittee, I think that is the best way given that they are an advisory group to the subcommittee.

Mr. Lamoureux: The only thing that I noted, if I may add, is that, however it works out, I believe that the subcommittee should be provided a list of names of all of those that did, in fact, apply for the position, which I think would be beneficial.

Mr. Chairperson: With that accepted, does recommendation or suggestion to the committee? Is the committee agreed on that?

Ms. Irvin-Ross: A motion for the committee.

Mr. Chairperson: Please proceed.

Ms. Irvin-Ross: I move

THAT this committee recommend an Executive Screening Committee consisting of Don Potter, Shirley Strutt and Bill Fraser be appointed to establish the selection criteria, the advertisement,

conduct the screening of applications and interviews and provide to the subcommittee the prioritized listing of candidates interviewed to fill the position of the Auditor General.

Mr. Chairperson: It has been moved by Ms. Irvin-Ross

THAT this committee recommend that an Executive Screening Committee consisting of Don Potter, Shirley Strutt and Bill Fraser be appointed to establish the selection criteria, the advertisement, conduct the screening of applications and interviews and provide to the subcommittee a prioritized list of candidates interviewed to fill the position of the Auditor General.

The motion is in order.

Mr. Derkach: I tried to raise it subtly in terms of my concern about us putting the names in the motion, and I am wondering whether or not we can agree to the concept of a committee and whether government would agree that perhaps we should revisit the names on the basis of some concerns that have been raised regarding the committee structure being tied too closely to former civil servants, rather than independent members who have no connection to government. I am posing that as a question to the government, yes.

Ms. Irvin-Ross: I was not a part of the conversation or the discussions, but I know that the House leaders were approached and had conversations about it. Each party submitted names, and those that are the three names that were agreed upon.

Mr. Derkach: That was the process that we went through as House leaders, and I acknowledge that completely. I am just indicating that I have had some issues raised regarding how closely individuals on that committee are tied to, and I am not saying this government, I am just saying government in general, and that it should be viewed as a more independent kind of approach by people who are not at all tied to government.

I am just raising that as a concern, and whether or not, perhaps, instead of us moving too quickly on this, we maybe should reflect on that issue as well. To be honest with you, at this point in time, I have no opinion on it, but I am just raising that because that has come to my attention.

Mr. Chairperson: Mr. Mackintosh. Any further comment?

For information of the committee members, we have a motion on the floor that is in order that has proposed three names that have been indicated, and we have to deal with this motion as it currently stands, before there can be further consideration of other options. So I am looking for advice from the committee with respect to this.

Mr. Maguire: Well, I guess just in light of the conversation that has just taken place, if the government would consider amending that motion to have the committee set up of three and then maybe the same three names that we come back with at a later point, but just to have the structure set up of three to take into consideration the concern that Mr. Derkach has just raised.

I just throw that out as a question, Mr. Chairperson.

Mr. Derkach: Well, I have to say, I do not want this misunderstood in any way, shape or form. I only raise that as an issue, not to be a reflection on any of the individuals because I think very highly of all three individuals. I think because this is an experiment, Mr. Chairperson, it would send the wrong signal if we now have those names on the floor, and then we started taking them off. I would, therefore, recommend that perhaps as this being the first process and because these are such high-quality individuals that we would then proceed with the way that the motion is read for this experiment. We would then learn from it as we proceed.

Mr. Chairperson: So the question before the committee—do you wish the motion to be read back? *[interjection]*

Okay. It has been moved by Ms. Irvin-Ross

THAT the committee recommend that an executive screening committee consisting of Don Potter, Shirley Strutt and Bill Fraser be appointed to establish the selection criteria, the advertisement, conduct the screening of applications and interviews and provide to the subcommittee a prioritized list of candidates interviewed to fill the position of the Auditor General.

The motion was in order.

* (12:30)

Mr. Derkach: Mr. Chairperson, I am wondering if our committee would agree—like we had just spoken about setting the criteria for the—I am wondering if we would agree to amend the motion by removing the words "setting criteria."

Ms. Irvin-Ross: I would like to ask the committee if there is unanimous consent to have this motion withdrawn.

Mr. Chairperson: Is there unanimous consent of the committee to have the motion that is on the floor withdrawn? *[Agreed]*

And replaced by an alternate motion? Is it agreed? *[Agreed]*

Thank you. The motion is now withdrawn.

Ms. Irvin-Ross: I have the new motion:

THAT this committee recommend an executive screening committee consisting of Don Potter, Shirley Strutt and Bill Fraser be appointed. The mandate of this external committee will be established by the subcommittee of the Committee on Legislative Affairs.

Mr. Chairperson: It has been moved by Ms. Irvin-Ross

THAT this committee recommend that an executive screening committee consisting of Don Potter, Shirley Strutt and Bill Fraser be appointed to establish the mandate of this external committee by the subcommittee of the Committee on Legislative Affairs.

Does that capture it?

An Honourable Member: Close enough.

Mr. Chairperson: The motion is in order.

Is the committee ready for the question?

Mrs. Mitchelson: Just a question. Have these three people been approached, and have they agreed to sit on the selection committee?

Mr. Mackintosh: When the names were finalized, I understood there was a contact made to see if they wanted to be short-listed. That is my understanding, and given that there are media here, I think it would be important for staff to make contact with them now.

Mr. Chairperson: Any further questions?

Is the committee ready for the question on the motion? The question before the committee is

THAT this committee recommend that an executive screening committee consisting of Don Potter, Shirley Strutt and Bill Fraser be—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Is it the will of the committee to accept this motion? *[Agreed]*

Ms. Irvin-Ross: I move

THAT a subcommittee of the Standing Committee on Legislative Affairs consisting of four government, two official opposition and one independent member, to be determined and names provided to the Clerk's office as soon as possible, be struck to establish the mandate of the external committee. The subcommittee may also undertake other duties it deems necessary in order to fulfill its responsibilities in this hiring process.

Mr. Chairperson: It has been moved by Ms. Irvin-Ross

THAT a subcommittee of the Standing Committee on Legislative Affairs consisting of four government members, two official opposition members and one independent member, to be determined and the names provided to the Clerk's office as soon as possible, be struck to establish the mandate of the external committee. The subcommittee may also undertake other duties it deems necessary in order to fulfill its responsibilities in this hiring process.

Any questions?

Is the committee ready for the question?

An Honourable Member: Question.

Mr. Chairperson: Does the committee wish the motion to be read back or—

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense? Thank you.

All those in favour of this motion? Agreed? Opposed?

Some Honourable Members: Agreed.

Mr. Chairperson: The motion is passed.

I must bring to the attention of committee members that in the past the Legislative Assembly staff were involved in all aspects of the hiring process. For example, the Clerk of the committee and a representative from the Legislative Assembly personnel were in attendance at all subcommittee meetings, including conducting the screening of applications and attending interviews of prospective

Legislative Assembly officers. Is this still the will of the committee?

Some Honourable Members: Agreed.

Mr. Chairperson: Is it agreed? *[Agreed]* Thank you.

Is it the will of the committee to have the Clerk's office establish a date and time for the exit interview of the current Auditor General? Agreed? *[Agreed]*

I believe that concludes the business of the committee.

It is 12:40 p.m., what is the will of the committee?

An Honourable Member: Committee rise.

Mr. Chairperson: Committee rise. Thank you.

COMMITTEE ROSE AT: 12:40 p.m.